



STATE OF WASHINGTON
ENVIRONMENTAL HEARINGS OFFICE

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P.O. Box 40903, Lacey, WA 98504-0903

May 12, 1994

T. J. Henderson
PO Box 611
White Salmon, WA 98672

Cheryl Nielson
Assistant Attorney General
Department of Natural Resources
PO Box 40100
Olympia, WA 98504-0100

RE: FPAB NO. 94-14
T.J. HENDERSON v. DNR
(Notice of Disposition #93-E-UFZ)

Dear Parties:

Enclosed is a Memorandum Opinion Upon Reconsideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "William A. Harrison".

Hon. William A. Harrison
Administrative Appeals Judge

WAH/jg/tj
Enc.
cc: Mr. L. Eugene Hanson - Attorney

that I mailed a copy of this document to
persons and addresses listed thereon
prepaid, in a receptacle for United States
mail at Lacey, Wa. on 5-12-94

A handwritten signature in cursive script that reads "Kathleen G. Foster".

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2 BEFORE THE FOREST PRACTICE APPEALS BOARD
3 STATE OF WASHINGTON

4 T. J. HENDERSON,) FPAB NO. 94-14
5)
6 Appellant,)
7)
8 v.)
9)
10 STATE OF WASHINGTON,) MEMORANDUM OPINION
11 DEPARTMENT OF NATURAL) UPON RECONSIDERATION
12 RESOURCES,)
13)
14 Respondent.)
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Respondent, State of Washington Department of Natural Resources having moved for dismissal of this matter on grounds of untimeliness, and,

Having heard oral argument from both parties on May 11, 1994, and

Based thereon and the records and file herein and being fully advised, the following is hereby entered as the memorandum opinion in support of the motion ruling.

Oral ruling. An oral ruling was made at the hearing of this motion on May 11, 1994. The ruling denied the motion to dismiss on two separate and independent grounds. The first ground was that there was no attorney-client relationship between Mr. Hanson and Mr. Henderson and that service upon Mr. Hanson was therefore not service on Mr. Henderson. The second ground was that service was required upon the person incurring a penalty even where represented by an attorney. The second ground was supported by Leson v. Department of Ecology, 59 Wn. App. 407, 779, P.2d 268 (1990).

MEMORANDUM OPINION
UPON RECONSIDERATION
FPAB NO. 94-14

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2 First Ground. The first ground for denial is hereby re-affirmed with reference to these
3 specific facts supporting the conclusion that an attorney client-relationship did not exist. First,
4 the document filed by Mr. Hanson was not a notice of appearance, but a letter. Second the
5 letter indicates that Mr. Hanson was retained to "assist" in this matter. Finally the letter
6 advises DNR to:

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8 . . . "keep Mr. Henderson and me advised as to the
9 next procedure."

10 These facts therefore show, in this case, that an attorney client relationship did not exist and
11 that service upon Mr. Henderson was therefore necessary under RCW 76.09.170(4). The
12 moving party has not shown this appeal to be untimely.

13 Second Ground. The second ground for denial turned upon the necessity of serving the
14 client where an attorney client-relationship does exist. That ground was, upon reconsideration,
15 mistaken. Where a mistaken order is made, it may be corrected after due and prompt notice to
16 the interested parties. Hall v. Seattle, 24 Wn. App. 357, 602 P.2d 366. This memorandum
17 opinion shall serve as notice of reconsideration on the second ground.
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19 The Leson case cited above turned on the language:

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21 " shall be delivered or mailed to each party and to
22 his attorney of record, if any. " RCW 34.04.120
 (repealed), p. 409 of Leson.

23 That language is distinguishable from RCW 76.09.170(4) of the Forest Practices Act which
24 refers to "Any person incurring a penalty. . . " without separate reference to his attorney. In
25

1 DNR's interpretation, service upon an attorney of record is service upon the person incurring
2 the penalty. An interpretation of a statute by the agency charged with its administration is
3 given considerable weight. Hart v. Peoples Nat. Bank, 91 Dwn.2d 197 (1978). The DNR
4 administers statutes relating to penalty mitigation prior to an appeal. Service upon an attorney
5 of record is service upon the client under the mitigation procedure of RCW 76.09.170(4).
6 This case is therefore resolved solely on the grounds that Mr. Hanson was not Mr.
7 Henderson's attorney of record in this matter. The second grounds based upon Leson is
8 vacated upon reconsideration.
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11 SO ORDERED.

12 DONE at Lacey, WA, this 11th day of May, 1994.

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15 HONORABLE WILLIAM A. HARRISON
16 Administrative Appeals Judge
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27 MEMORANDUM OPINION
UPON RECONSIDERATION
FPAB NO. 94-14